IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2046 of 2005
Date of decision:18.10.2006

Lalit Hosiery and others

....Petitioners

versus

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. S.K.Mukhi, Advocate, for the appellants.

Mr. SK Garg Narwana, Advocate, for the revenue.

JUDGMENT:

1. This petition seeks quashing of order dated 23.9.2004, Annexure P.1 to the extent of holding that surcharge under section 113 of the Income Tax Act, 1961 (for short, 'the Act') was payable for the block period 1.4.1990 to 24.5.2000, though the said provision was not in force during the relevant period.

2. Case of the petitioner is that search was conducted in the premises of the petitioner on 24.5.2000 which was followed by notice under section 158 BC of the Act on 10.10.2000. The petitioner filed return on 13.2.2001 for the block period 1.4.1990 to 24.5.2000 declaring undisclosed income. The petitioner also filed an application before the Settlement Commission, which was disposed of on 23.9.2004 determining total income and also levying surcharge in terms of Finance Act 2000.

3. Contention raised on behalf of the petitioner is that in Section 113 of the Act, provision for surcharge has been incorporated only with effect from 1.6.2002, which was prospective and, therefore, surcharge was

not leviable. Learned counsel for the assessee relied upon order passed by this Court in ITA No.29 of 2006 (**The Commissioner of Income tax (Central) Ludhiana v. Shri Roshan Singh Makker)**, decided on 16.5.2006, dismissing the appeal of the revenue against the order of the Tribunal to the effect that surcharge was leviable w.e.f 1.6.2002.

4. In the reply filed on behalf of the revenue, it is submitted that in the present case, assessment year relevant to the year of search was the block period from 1.4.1990 to 24.5.2000. Though, the provision was incorporated in the Act vide Finance Act 2002 w.e.f 1.6.2002, in the Finance Act 2000 itself, identical provision was added vide Section 3 of the said Act.

5. We have heard learned counsel for the parties.

6. Relevant observations in the impugned order are as under:-

> "31. It may be mentioned that even though section 113 was amended with effect from 1.6.2002, provisions relating to levy of surcharge were there in the Finance Act 2000 which would be relevant since the date of search falls in the financial year 2000-01. Levy of surcharge is clearly mentioned in The First Schedule for all entities including individuals HUFs and firms. Accordingly, we hold that surcharge as applicable under the provisions of Finance Act 2000 is to be further added to the tax payable under section 113 of the Act."

6.1 Having regard to the fact that in the Finance Act 2000, a specific provision has been incorporated, merely because addition in the Income tax Act has been incorporated only w.e.f 1.6.2002, did not affect liability of the assessee to pay surcharge. It is not possible to accept that a provision in a Finance Act could not be given effect to unless the same was incorporated in the main Income tax Act.

7. As regards the order of this court in **Shri Roshan Singh Makker's** case (supra), we find that provisions of Finance Act 2000 were not brought to the notice of the Tribunal nor the same were brought to the notice of this Court by the learned counsel for the revenue in that case and do not find mention in the order of the Tribunal which has been extracted in the order of this court. This court only interpreted the effect of Proviso to Section 113 added w.e.f 1.6.2002,without taking into account the provisions

of the Finance Act 2000 which has been relied upon in the impugned order. The said order cannot, thus, be taken to be an authority for the proposition that irrespective of a provision in the Finance Act, levy of surcharge was not permissible on the ground that Proviso to Section 113 of the Act was added only w.e.f 1.6.2002.

8. In view of the above, we do not find any merit in the writ petition and the same is dismissed.

(Adarsh Kumar Goel)
Judge

October 18, 2006 (Rajesh Bindal)
'gs' Judge